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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1619

GEORGE M. VASILJ, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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IN THE

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No._____

GEORGE M. VASILJ, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioner George M. Vasilj respectfully prays that a writ of certionary issue to review the judgment and opinion of the United States Court of Appeals of the Ninth Circuit entered in this proceeding on April 30, 1970.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. No opinion was rendered by the District Court for the Central District of California.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on April 30, 1970, affirming Petitioner's conviction dated March 12, 1969. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1) and Supreme Court Rule 22 (2).

QUESTIONS PRESENTED

1. Whether the acts of a Selective Service local board which are contrary to law are subject to review.

2. Whether a local board may, by letter cast in non-mandatory terms, impose a duty to report for induction after judicial stay of induction on date previously ordered by the local board, such as to support a criminal conviction for failure to report pursuant to such letter.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

United States Constitution, Fifth Amendment,

> No person shall ... be deprived of life, liberty or property, without due process of law....

United States Code, Title 50:

§§ 454, 455, 460 (b)(3), and 462(a)

Code of Federal Regulations, Title 32, Chapter XVI, Parts 1600-1690

STATEMENT UNDER RULE 33 (2)(b)

No court of the United States as defined by 22 U.S.C. § 451, has, pursuant to 28 U.S.C. § 2403, certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn in question.

STATEMENT OF THE CASE

On August 8, 1966, Petitioner was reclassified by his local board from II-S to I-S. He took a timely appeal. A year passed and after first being defectively ordered to report for induction, his appeal was considered on an incomplete record and denied on September 21, 1967. He was again ordered to report for induction. Petitioner then sued in the District Court for injunctive relief to prevent his induction until his classification was first processed in accordance with the Universal Military Training and Service Act and regulations promulgated thereunder, claiming a series of denials of due process and that he was industrially blind and thus not properly classified I-A.

The Circuit Court of Appeals

issued its temporary restraining order staying his induction the day before that on which he was ordered for the second time by the local board to report for induction. That order was dissolved after the day of the ordered induction and the local board advised Petitioner by letter that he "may" report for induction on January 24, 1968. Petitioner failed to report on January 24, 1968, and for that was prosecuted and convicted.

The District Court held that it lacked jurisdiction in the civil suit, in light of 50 U.S.C. §460 (b)(3). The Circuit Court of Appeals affirmed that determination in Vasilj v. Local Board No. 134, et al, No. 23,050, decided December 22, 1969.

The Circuit Court of Appeals then affirmed Petitioner's conviction.

REASONS FOR GRANTING THE WRIT

Point 1.

The local board did not follow the procedure required by the regulations and by due process. Consequently, its action of classifying and ordering Petitioner's induction is invalid. Estep v United States, 327 US 114, 121, 90 L Ed 567, 66 S Ct 423; Jaffe, Judicial Control of Administrative

Action, 587; United States ex rel. Accardi v Shaughnessy, 347 US 260, 98 L Ed 681, 74 S Ct 499; Service v Dulles, 354 US 363, 1 L Ed 2d 1403, 77 S Ct 1152; Vitarelli v Seaton, 359 US 535, 3 L Ed 2d 1012, 79 S Ct 960; 114 U Pa L Rev 1014, 1023; Knox v United States (CA9) 200 F2d 398, 401; United States v Vincelli, 215 F2d 210, reh den 216 F2d 681; Townsend v Zimmerman (CA6) 237 F2d 376; United States v Stiles (CA3) 169 F2d 455; United States v Thompson, D. C. Mass, 1 S.S.L.R. 3059; Re Gault, 387 US 1, 32, 33, 18 L Ed 2d 527, 87 S Ct 1428; Simmons v United States, 348 US 397, 406, 99 L Ed 453, 75 S Ct 397.

While Congress properly empowered the President to prescribe selective service regulations detailing the standards and procedures for classification and induction, neither Congress nor the President in turn delegated any authority to local boards to act in any manner inconsistent with those regulations and the Act, or to be a law unto themselves.

The local board refused to consider Petitioner's eye defect, and instead insisted that his sole ground of appeal of his classification was that he was a sole-surviving-son, and that since he misinterpreted the law in this regard and was not a sole-surviving son, then his appeal was doomed and

no other ground raised by him would be considered.

The local board refused to send Petitioner's file to the appeal board within the five days required by the regulations [32 C.F.R. § 1626.14], but rather, issued a void order to report for induction while his appeal was pending [32 C.F.R. § 1626.41], reopened his classification while the appeal was pending, transmitted only part of the file to the appeal board [32 C.F.R. §§ 1626.13 (a), 1626.14, 1626.23], and upon the affirmation of the classification by the appeal board on an incomplete file transmitted to them more than a year after it was required to be transmitted, the local board purported to issue an order to report for induction signed not by a member of the board as is required [32 C.F.R. § 1606.51 (a)] but by an unauthorized employee signing the name of a member of the board. [32 C.F.R. § 1606.31]

The coordinator of the local board threatened Petitioner's counsel with criminal prosecution for representing Petitioner in the civil action. [Rptr Trans pp. 92, 93]

Any one of the acts of the local board, taken alone, might well not prejudice Petitioner. Taken together, however, they demonstrate an adamant refusal on

the part of this local board to follow the requirements of the Act and the related regulations, and to consider, classify, and induct the Petitioner in a manner consistent with the due process requirement, in a manner which honestly considers the facts offered to them and which are available to them.

Local boards may not act in a manner which is arbitrary and capricious. United States v Robel, 389 US 258, 280, 19 L Ed 2d 508, 523, 88 S Ct 419; Estep v United States, 327 US 114, 90 L Ed 567, 66 S Ct 423.

Point 2.

On August 16, 1966, the local board received a timely notice of appeal of Petitioner's classification as I-A. Without acting on the appeal, on September 8, 1967, the local board ordered Petitioner to report for induction. [Govt. Exhibit "A" p. 9] on September 12, 1967, the local board wrote to Petitioner as follows: "We are in receipt of information which warrants reconsideration of your Selective Service status by this local board; therefore, this is to advise that you are not required to report for INDUCTION on 27 September 1967." [Govt. Exh. "A" p. 43] However, the local board did not in fact reconsider Petitioner's status as the letter represented they were doing. Instead, a part of his file was transmitted to the appeal board.

His appeal was denied, and on November 29, 1967, a second order to report was sent, the original of which was signed by an employee rather than a board member. No order on the required form SSS 252, or on any other Selective Service form was later sent.

On December 11, 1967, the Court of Appeals stayed Petitioner's induction. The communication which formed the basis of the indictment and conviction was a mere letter [Govt. Exhibit "A" p. 52] which is cast NOT in mandatory terms, but states "You may report" and then follows a date and address.

Point 3.

The District Court refused Petitioner's evidence as to his physical condition and disqualification, refused to consider whether his condition disqualified him, refused evidence as to the lack of fact or substance to the determination of the local board that Petitioner was physically acceptable, refused evidence that Petitioner's eyes were not examined at all during the preinduction physical examination; but admitted into evidence Petitioner's selective service file, without explanation, which included the information upon which the Court of Appeals rested its determination that Petitioner's

contended eye defect "... finds no support in either the Selective Service file or the record in the district court." Vasilj v United States, pp. 2 & 3, Appendix infra.

Point 4.

In Petitioner's civil attempt to secure review of and relief from the excesses of his local board the Government urged that no civil review of the determinations of a local board may be had, in view of 50 U.S.C. § 460 (b)(3), and that to hold otherwise would afford Petitioner two bites of the cherry. The District Court agreed and dismissed on that ground.

Thereafter, Petitioner was indicted for refusal to be inducted. While that prosecution was pending, the Government urged in the civil appeal that Petitioner's indictment made the civil case moot. Yet, in urging to the Court of Appeals that the conviction be affirmed, the Government urged that the civil determination of Vasilj v Local Board was controling; and the Court of Appeals so held. Effectively, the Government has urged in the civil case that the criminal case controlled, and in the criminal case that the civil case controlled. Petitioner has been denied civil review of his classification. He also was prohibited from introducing evidence at his criminal trial that tended to show that his local board exceeded its jurisdiction with

respect to examination of his eyes and consideration of that condition. He was, however, permitted to show a series of procedural defects in his classification. He urged that these stood not only for themselves, but added additional probity to his claim that his eyes were defective and that the local board did not consider the defect and lacked a factual basis for its classification of Petitioner as I-A.

Point 5.

In cases where the order of a local board affects those rights safeguarded by the First Amendment to the United States Constitution, the federal courts have jurisdiction to protect those rights. Dombrowski v Pfister, 380 US 479, 485, 486, 487, 14 L Ed 2d 22, 85 S Ct 1116; Wolf v Selective Service (CA2) 372 F2d 817, 820, 822, 824.

Effective judicial review of the actions of selective service local boards --- administrative agencies with unique power over the lives of men, and unique responsibilities to aid in raising armies --- is constitutionally required. School of Magnetic Healing v McAnnulty, 187 US 94, 108, 47 L Ed 90, 23 S Ct 33; Abbott Laboratories v Gardner, 387 US 136, 140, 18 L Ed 2d 681, 87 S Ct 1507; St. Joseph Stock Yards v United States, 298 US 38, 84, 80 L Ed 1033, 56 S Ct 720; Ohio Valley Water Co. v Ben Avon

Borough, 253 US 287, 64 L Ed 908, 40 S Ct 527; 71 Harv L Rev 401, 420, 769, 770-786; Estep v United States, 327 US 114, 121 90 L Ed 567, 66 S Ct 423; Ex parte Young, 209 US 123, 146, 147, 52 L Ed 714, 28 S Ct 441, 13 LRA NS 932; Oklahoma Operating Co. v Love, 252 US 331, 337, 64 L Ed 596, 40 S Ct 338; Petersen v Clark (DC Cal) 289 F Supp 949.

CONCLUSION

For these reasons, a writ of certionari should issue to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE M. VASILJ,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 24,150

[April 30, 1970]

On Appeal from the United States District Court for the Central District of California

Before: ELY and WRIGHT, Circuit Judges, and JAMESON,* District Judge

JAMESON, District Judge:

This is an appeal from a conviction for refusal to submit to induction under the Universal Military Training Act, 50 U.S.C. App. § 462.

Appellant properly registered with his local board and was initially classified II-S. On August 8, 1966, he was classified I-A. A timely appeal was taken. In a personal appearance before his local board and in his statement to the appeal board, appellant claimed that he was the "sole surviving male member of (his) family". This claim has now been abandoned.

The appeal was denied September 21, 1967.[1] On November 29, 1967, appellant was ordered to report for induction on Decem-

*Honorable William J. Jameson, United States Senior District Judge, Billings, Montana, sitting by designation.

[1]While appellant was again classified I-A following his personal appearance before the local board on September 8, 1966, his file was not forwarded to the appeal board until September 14, 1967.

ber 12, 1967. A temporary restraining order was issued by this court. By letter dated January 2, 1968, the local board ordered appellant to report for induction on January 24, 1968, calling his attention to his continuing duty to report for induction under Selective Service Regulation 1642.2. Appellant failed to report for induction, and this prosecution followed.

In the meantime, on December 7, 1967, appellant filed a suit against his local board for damages and for an injunction to prevent his induction. The district court held that it lacked jurisdiction in light of 50 U.S.C. App. § 460(b)(3).[2] Appellant contended on appeal in the civil action, as he does here, that § 460 (b)(3) is unconstitutional as violative of the due process clause of the Fifth Amendment. In affirming the district court in the civil action (Vasilj v. Local Board No. 134, et al., No. 23,050 decided December 22, 1969) we held that this issue is no longer open, having been decided adversely to appellant's contention in Clark v. Gabriel, 1968, 393 U.S. 256, 89 S.Ct. 424, 21 L.Ed.2d 418, reh. den. 393 U.S. 1112, 89 S.Ct. 853, 21 L.Ed.2d 812 (1969), and that appellant was not within the exception to section 460(b)(3) carved by the companion case of Oestereich v. Selective Service Board, 1968, 393 U.S. 233, 89 S.Ct. 429, 21 L.Ed.2d 394. This disposes of appellant's primary contention on this appeal.

Appellant complains of the failure of Selective Service and the district court to consider evidence of his physical condition, contending that he is "industrially blind" and thereby disqualified from service in the Armed Forces. Appellant's position finds no support in either the Selective Service file or the record in the district court.

The Selective Service file discloses that on his Classification Questionnaire, received by the local board on November 8, 1965, appellant indicated that he suffered from "a vision defect" which would "disqualify (him) for service in the Armed Forces". A

[2] 50 U.S.C. App. § 460(b)(3) provides in relevant part:
"No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under Section 12 of this title, * * * after the registrant has responded either affirmatively or negatively to an order to report for induction * * *."

current questionnaire received August 22, 1966, contained the notation "sight impediment—very slight case of hay fever". A third questionnaire received October 17, 1966, contained the statement "have an eye condition causing the eyes to cross".[3]

On December 22, 1966, appellant reported for a preinduction examination and was found "acceptable" for military service. The report on the eye examination shows distant vision as 20/400, corrected to 20/30, in each eye. The summary of defects reads: "Esophoria and myopia[4] (see letter) (w/in acceptable limits)". Two letters from appellant's own eye specialist, Dr. B. E. Reasoner, dated September 21, 1966, and December 13, 1966, were "reviewed and considered".[5]

A statement of acceptability was mailed to appellant on January 3, 1967. By letter dated January 10, 1967, appellant's counsel requested a "second examination". In reply the local board stated that "the acceptability of a registrant • • • is determined by the Armed Forces Examining and Induction Station"; and that, "Doctor's letters submitted by this registrant were considered at the time of physical examination and he was found wholly acceptable". The letter concluded: "Any further medical letters he wishes to submit will be included with his papers when he is ordered to report for induction."

---

[3]Both appellant and the local board prepared summaries of appellant's appearance before the board on September 8, 1966. Both summaries refer to appellant's claim that he was a sole surviving son and his possible claim for a student deferment. Neither made any reference to the claimed vision defect; nor did appellant's statement to the appeal board.

[4]"Esophoria" is defined as "inward deviation of an eye only when it is covered and fusion is prevented", and "myopia" as "nearsightedness".

[5]Dr. Reasoner's letter of December 13, 1966, reads in part:

"In conclusion it may be said that this patient has a moderate degree of myopia and also has a marked esophoria with prisms included in his lens to reduce the extent of the esophoria that he has. This is not a cure as far as the disease is concerned, but it does give him relief from the symptoms.

"So far as further treatment is concerned an increase in the prisms or perhaps eye muscle surgery may be necessary later."

Had appellant reported for induction he would have received a final physical examination.[6] 32 C.F.R. §§ 1632.5, 1632.14, 1632.16, 1632.30. The local board was not required to hear further evidence with respect to appellant's alleged physical impairment; nor was the district court. There was clearly a "basis in fact" for the classification given appellant within the rule of Estep v. United States, 1945, 327 U.S. 114, 66 S.Ct. 423, 90 L.Ed. 567.

The letter of January 2, 1968, was an order to report on January 24, 1968.[7] There is no evidence that it was otherwise construed by appellant. The postponement of induction did not render invalid the Order To Report For Induction (SSS Form 252). 32 C.F.R. § 1632.2(d). It was not necessary to issue another formal order. Beierle v. United States, 9 Cir. 1968, 400 F.2d 128, 132.

Nor is there merit in appellant's contention that the orders were not properly signed by an authorized officer. The person who signed the name of the chairman to each order was authorized by board resolution to do so, pursuant to 32 C.F.R. § 1604.59. In any event no prejudice was shown. United States v. Cralle, 9 Cir. 1969, 415 F.2d 1065, 1067.

Affirmed.

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[6]Appellant was so advised by the order to report for induction, which reads in part:

> "If you wear glasses bring them. • • • If you have any physical or mental condition which, in your opinion, may disqualify you for service in the Armed Forces, bring a physician's certificate describing that condition, if not already furnished to your local board. • • • You may be found not qualified for induction. Keep this in mind in arranging your affairs, to prevent any undue hardship if you are not inducted".

[7]Appellant was first ordered to report on September 27, 1967. This order was cancelled by letter dated September 12, 1967, pursuant to 32 C.F.R. § 1626.41, by reason of the pending appeal. The letter did not reopen appellant's classification. A second Order To Report For Induction was issued on November 29, 1967.

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APPENDIX "B"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE MARK VASILJ, *Appellant,* vs. LOCAL BOARD No. 134, et al., *Appellees.*	No. 23,050

[December 22, 1969]

Appeal from United States District Court
for the Central District of California

Before: DUNIWAY and HUFSTEDLER, Circuit Judges, and PENCE,* District Judge.

PER CURIAM:

Appellant registered with Local Board No. 134 and was initially classified II-S. Subsequently the board classified him I-A, and ordered him to report for induction, from which a timely appeal was taken. The appeal board upheld the I-A classification and ordered appellant to report forthwith. Appellant then filed suit in the district court for damages and for an injunction to prevent his immediate induction into the armed forces. The district court held that it lacked jurisdiction in light of 50 U.S.C. App. 460(b)(3),[1] and this appeal followed.

*Honorable Martin Pence, United States District Judge, District of Hawaii, sitting by designation.

[1]Military Service Act of 1967, 50 U.S.C. App. 460(b)(3) provides, in relevant part:

"No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under Section 12 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction . . . ."

Plaintiff-appellant urges that section 460(b)(3) of 50 U.S.C. App. is unconstitutional, as violative of the due process clause of the Fifth Amendment. This issue is no longer open, having been decided adversely to this plaintiff by the case of *Clark v. Gabriel,* 1968, 393 U.S. 256.

Further, plaintiff-appellant is found not to be within the coverage of the exception to section 460(b)(3) carved by the companion case of *Oestereich v. Selective Service Board,* 1968, 393 U.S. 233.

For the foregoing reasons, the decision of the district court must be AFFIRMED.

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APPENDIX "C"

APPENDIX C

Except as otherwise provided in this title [sections 451, 453, 454, 455, 456, and 458-471 of this Appendix], every male citizen of the United States ... shall be liable for training and service in the Armed Forces of the United States: Provided, That each registrant shall be immediately liable for classification and examination, and shall, as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces: Provided further, That, notwithstanding any other provision of law, any registrant who has failed or refused to report for induction shall continue to remain liable for induction and when available shall be immediately inducted: ... The President is authorized, from time to time, whether or not a state of war exists, to select and induct fortraining in the National Security Training Corps as hereinafter provided such number of persons as may be required to further the purposes of this title [sections 451, 453, 454, 455, 456 and 458-471 of this Appendix].

No person shall be inducted into the Armed Forces for training and service or shall be inducted for training in the National Security Training Corps under this title

[sections 451, 453, 454, 455, 456 and 458-571 of this Appensix] until his acceptability in all respects, including his physical and mental fitness, has been satisfactorily determined under standards prescribed by the Secretary of Defense:.... [50 U.S.C. 454(a)]

The selection of persons for training and service under section 4 [section 454 of this Appendix] shall be made in an impartial manner, under such rules and regulations as the President pay prescribe, from the persons who are liable for such training and service and who at the time of selection are registered and classified, but not deferred or exempted: .... [50 U.S.C. § 455]

The President is authorized ---

(1) to prescribe the necessary rules and regulations to carry out the provisions of this title [sections 451, 453, 454, 455, 456 and 458-471 of this Appendix];

(2) ...

(3) to create and establish within the Selective Service System civilian local boards, civilian appeal boards, and such other civilian agancies, including agencies of appeal, as may be necessary to carry out its functions with respect

to registration, examination, classification, selection, assignment, delivery for induction, and maintenance of records of persons registered under this title [sections 451, 453, 454, 455, 456 and 458-471 of this Appendix], together with such other duties as may be assigned under this title [said sections]: ...

Such local boards, or separate panels thereof each consisting of three or more members, shall under rules and regulations prescribed by the President, have the power within the respective jurisdictions of such local boards to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this title [said sections], of all individuals within the jurisdiction of such local boards. The decisions of such local board shall be final, except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe. There shall be not less than one appeal board located within the area of each Federal judicial district in the United States and within each Territory and possession of the United States, and such additional separate panels thereof, as may be prescribed by the President.

Appeal boards within the Selective Service System shall be composed of civilians who are citizens of the United States and who are not

members of the armed forces. The decisions of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President, ... No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards or the President, except as a defense to a criminal prosecution instituted under section 12 of this title [section 462 of this Appendix], after the registrant has responded either affirmatively or negatively to an order to report for induction, or for civilian work in the case of a registrant determined to be opposed to participation in war in any form: Provided, That such review shall go the question of the jurisdiction herein reserved to local boards, appeal boards, and the President only when there is no basis in fact for the classification assigned to such registrant. [50 U.S.C. § 460 (b)]

Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title [§ 451, 453, 454, 455, 456 and 458, 471 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty,

or having and exercising any authority under said title [said sections], rules, regulations, or directions who shall knowingly made, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly made, or be a party to the making, of any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title [said sections], or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title [said sections], or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title [said sections], or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said sections], or any person or persons who shall knowingly hinder or interfere or attempt

to do so in any way, by force or violence or otherwise, with the administration of this title [said section] or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title [said sections] unless such person has been actually inducted for the training and service prescribed under this title [said sections] or unless he is subject to trial by court martial under laws in force prior to the enactment of this title [June 24, 1948]. Precedence shall be given by courts to the trial of cases arising under this title, and such cases shall be advanced on the docket for immediate hearing, and an appeal from the decision or decree of any United States district court or United States court of appeals shall take precedence over all other cases pending before the

court to which the case has been referred. [50 U.S.C. 462 (a)]

... the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252) ... [32 C.F.R. 1625.2]

When the local board reopens the registrant's classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he was in before his classification was reopened." [32 C.F.R. § 1625.11]

Each such classification shall be followed by the same right of appearance before the local board and the same right of appeal as in the case of an original classification. [32 C.F.R. § 1625.13]

The reopening of the classification of a registrant by the local board shall cancel any Order to Report for Induction (SSS Form No. 252) ... which may have been issued to the registrant.... [32 C.F.R. § 1625.14]

The registrant... may take an appeal ... at any time ... within 30 days after the date the local board mails to the registrant a Notice of Classification (SSS Form No. 110). [32 C.F.R. § 1626.2 (c)]

The person appealing may attach to his appeal a statement specifying the matters in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or to give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file. [emphasis added] [32 C.F.R. § 1626.12]

Immediately upon an appeal being taken to the appeal board by a person entitled to appeal, the local board shall ... carefully check the registrant's file to make certain that all steps required by the regulations in this chapter have been taken and that the record is complete. If any information considered by the local board does not appear in the written information in the file, other than information presented orally by the registrant or in his behalf at a personal appearance under the provisions of § 1624.2 of this chapter, the local board shall

prepare and place in the file a written summary of such information. [32 C.F.R. § 1626.13 (a)]

The registrant's file shall be forwarded to the appeal board, or appropriate panel thereof, immediately after the period provided in paragraph (c) of & 1626.2 for taking an appeal has elapsed and the local board has complied with the provisions of § 1626.13, but in no event shall the file be forwarded later than five days after the period for taking an appeal has elapsed. The local board shall enter the Classification Record (SSS Form No. 102) the date it transmits the registrant's file to the appeal board or appropriate panel thereof. [32 C.F.R. § 1626.14]

The appeal board will carefully check each file to determine whether all steps required by the regulations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the appeal board to determine the classification of the registrant, the appeal board shall return the file to the local board with a request for additional information or action. If the

appeal board return the file to the local board for additional information or action, it shall enter the date of return in Column 8 of the Docket Book of Appeal Board (SSS Form No. 121). When the file is returned to the appeal board the appeal shall be re-entered on the Docket Book of Appeal Board (SSS Form No. 121) in the manner prescribed in section 1626.21. [32 C.F.R. § 1626.23]

The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant. [32 C.F.R. & 1626.26 (a)]

Such classification of the registrant shall be final except where an appeal to the President is taken ... [32 C.F.R. § 1626.26 (d)] [Note that an appeal to the president was unavailable to Appellant here, as there is a precondition to that right that first at least one member of the appeal board must dissent from the appeal board classification, which did not happen here.]

The local board shall not issue an order for a registrant to report for induction either during the period afforded the registrant to take an appeal to the appeal board or during the period such an appeal is pending. Any order to report for

induction which has been issued during either of such periods shall be ineffective and shall be cancelled by the local board. Whenever an appeal to the appeal board has been taken by a person entitled to do so, an order to report for induction which has previously been issued to the registrant shall be ineffective and shall be cancelled by the local board. [32 C.F.R. § 1626.41]

Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (SSS Form No. 252) in duplicat . ... The local board shall mail the original of the Order to Report for Induction (SSS Form No. 252) to the registrant and shall file the copy in his Cover Sheet (SSS Form No. 101). [32 C.F.R § 1632.1]

All forms and revisions thereof referred to in these or any new or additional regulations, or in any amendment to these or such new or additional regulations, and all forms and revisions thereof prescribed by the Director of Selective Service shall be and become a part of these regulations in the same manner as if each form, each provision therein, and each revision thereof were set forth in full. Whenever in any form or in the instructions printed thereon, any person shall be instructed or

required to perform any act in connction therewith, such person is hereby charged with the duty of promptly and completely complying with such instruction or requirement. [32 C.F.R. § 1606.51 (a)]

Official papers issued by a local board may be signed by the clerk of the local board if he is authorized to do so by resolution duly adopted by and entered in the minutes of the meetings of the local board, provided that the chairman or a member of the local board must sign a particular paper when specifically required to do so by the Director of Selective Service. [32 C.F.R. § 1604.59]

Signatures affixed to official papers of the Selective Service System must be written in pen and ink by the person signing. Rubber stamp facsimiles will not be used. [32 C.F.R. § 1606.31]

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1619

GEORGE M. VASILJ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the United States District Court for the Central District of California for having wilfully refused to submit to induction in violation of 50 U.S.C. App. 462. The court of appeals affirmed (Pet. App. A). The opinion below, on which we rely, fully treats and refutes petitioner's contentions that the procedures of the local board were defective in various respects and that the order to report for induction was unauthorized.

Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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E. ROBERT SEAVER, CL

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 1619

GEORGE M. VASILJ, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR REHEARING

ROLAND S. BARCUME
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Newport Beach, California
92660

Attorney for Petitioner

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 1619

GEORGE M. VASILJ, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR REHEARING

The Petitioner George M. Vasilj respectfully prays for rehearing of the order of this honorable Court entered June 29, 1970 denying the Petition For Writ of Certiorari sought to review the judgment and oppinion of the United States Court of Appeals of the Ninth Circuit entered in this proceeding on April 30, 1970.

Point 1.

Had Petitioner's offer of evidence at the trial as to his physical deficiency and the refusal of the local board to either examine him with respect to that deficiency or consider the same, that evidence would have established that the local boards determination that Petitioner was physically acceptable and subject to an order to report for induction was wholly without factual foundation. Petitioner sought to put in issue at the trial the regularity of his selective service file with respect to his eye defect. Once the trial Court deprived his of this opportunity, it was error for the Court of Appeal to make a factual determination that the Selective Service file failed to support Petitioner's argument on appeal.

Point 2.

This Court now has matters pending before it in the Selective Service field, which, when determined by this Court, are likely to substantially effect the rights of this Petitioner in such a manner that if the Petition is not granted in the instant case, the determination in this case will be in conflict with the determinations made in the October, 1970 term.

Point 3.

The determination of the Circuit Court and the civil case which appears as Appendix B in the Petition for Writ of Certiorari erroneously deprives Petitioner of civil relief to review the acts of the local board in excess of the local board's jurisdiction relating to the 1-A classification and order to report for induction of the Petitioner. The trial court in the campanion case of the United States of America vs. Vasilj, ought to have abated the criminal trial proceedings until a final determination was made in the Defendant's effort to secure civil relief.

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Newport Beach, California
92660

Attorney for Petitioner

CERTIFICATE PURSUANT TO RULE 58 (2)

I, ROLAND S. BARCUME, a member of the bar of this Court, and the attorney for Petitioner, hereby certify that the within Petition For Rehearing is presented in good faith and not for delay and that the Petition is restricted to the ground designated in sub section 2 of rule 58 of this Court.

Dated: July 17, 1970

ROLAND S. BARCUME